



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2017-0661; FRL-9986-32-Region 9]**

#### **Air Plan Approval; Arizona; Hayden and Miami Areas; Lead and Sulfur Dioxide Control**

#### **Measures – Copper Smelters**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Arizona State Implementation Plan (SIP). These revisions concern emissions of lead and sulfur dioxide (SO<sub>2</sub>) from the copper smelter at Hayden, AZ and SO<sub>2</sub> from the copper smelter at Miami, AZ. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule will be effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2017-0661. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR**

**FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, (415) 972-3073, [gong.kevin@epa.gov](mailto:gong.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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### **I. Proposed Action**

On March 30, 2018 (83 FR 13716), the EPA proposed to approve the following rules into the Arizona SIP.<sup>1</sup>

Rule Citation	Rule Title	Effective	Submitted
R18-2-B1301	Limits on Lead Emissions from the Hayden Smelter	7/1/2018 or 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit	4/6/2017

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<sup>1</sup> In addition to the rules addressed in this action, ADEQ’s April 6, 2017 submittal also included R18-2-B1301.01 - Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter; R18-2-B1302 - Limits on SO<sub>2</sub> Emissions from the Hayden Smelter; R18-2-715 - Standards of Performance for Existing Primary Copper Smelters: Site-Specific Requirements; and R18-2-715.01 - Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring. The EPA has already approved R18-2-B1301.01 into the SIP, 83 FR 7614 (February 22, 2018) and intends to take action on the remaining rules in a separate rulemaking.

		Revision No. 60647	
R18-2-C1302	Limits on SO <sub>2</sub> Emissions from the Miami Smelter	On the later of the effective date of the EPA Administrator's action approving it as part of the state implementation plan or January 1, 2018	4/6/2017
Appendix 14	Procedures for Sulfur Dioxide and Lead Fugitive Emissions Studies for the Hayden Smelter	5/7/2017	4/6/2017
R18-2-715.02	Standards of Performance for Existing Primary Copper Smelters; Fugitive Emissions	5/7/2017	4/6/2017

We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

## **II. Public Comments and EPA Responses**

The EPA's notice of proposed rulemaking provided a 30-day public comment period. During this period, we received 15 comments. Nine of these comments address issues not related to the subject of this rulemaking, including: environmental quality issues in Asia, climate change policy, and other federal requirements not related to SO<sub>2</sub> or lead pollution in Arizona. Six comments are germane to this rulemaking, and are supportive of the EPA's proposal to approve these regulations. One of these commenters raised a concern about the State and the EPA's statement that controlling emissions from the 1,000-foot stack would result in improved air quality at the ground level monitors at Hillcrest and Globe Highway in the Hayden Area. This commenter also suggested that the EPA should pay additional attention to fugitive lead emissions that may result from other smelter processes, including furnace dust and from residue from converter bed cleaning. We thank the commenter for the questions and suggestion and

address the issues raised below.

The Arizona Department of Environmental Quality (ADEQ) and the EPA believe that the prime contributors to lead nonattainment are fugitive emissions from smelter operations and leaded dust surrounding the smelter. Rule R18-2-B1301.01, approved into the Arizona SIP in 83 FR 7614, addresses leaded dust control measures for non-smelting process sources, which includes sources such as the bedding plant and reverts piles. Dust and material generated from smelter process sources, such as furnace and converter dust, are collected and deposited in these non-smelting process sources for disposal or reintroduction into the smelter process. Rule R18-2-B1301 addresses fugitive emissions from smelter operations by establishing operational standards for process equipment and control devices, requirements for the process gas capture system and control devices operations and maintenance plan (O&M plan), performance testing and compliance demonstration requirements, and recordkeeping and reporting requirements. However, Rule R18-2-B1301 does not include a numeric fugitive lead emissions limit. The EPA recognized this issue during the rule development process and requested that ADEQ provide supplementary analysis to address this concern. ADEQ responded on October 11, 2018, stating that continuous monitoring of fugitive lead emissions is technically infeasible, and that parametric monitoring of capture and control device efficiency (which would minimize uncontrolled fugitive emissions, and increase the volume of process gas directed to control devices and ultimately the 1,000-foot stack) was a suitable proxy for a numeric fugitive lead limit. ADEQ also reiterated that the fugitive emissions analyses required by Appendix 14 would be used to validate this approach.<sup>2</sup> The EPA generally agrees with this reasoning.

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<sup>2</sup> Letter from Timothy S. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality,

The EPA also requested that ADEQ address an issue regarding the allowance for alternative sampling points for SO<sub>2</sub> at the Miami Smelter. Specifically, we requested that ADEQ eliminate a provision that allowed for the owner or operator of the Miami Smelter to petition for an alternative sampling point if the current locations proved infeasible. Such flexibility might have been necessary at the time of rule development, as capture and control upgrades were still being installed; however, now that the upgrades are complete, we do not believe this flexibility is still necessary. ADEQ agreed to withdraw subsection (E)(6) of Rule R18-2-C1302 allowing for alternative sampling point since none are needed at the Miami Smelter.<sup>3</sup>

The comments and additional analysis from ADEQ have been added to the docket for this action and are accessible at <https://www.regulations.gov/docket?D=EPA-R09-OAR-2017-0661>.

### **III. EPA Action**

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving these rules into the Arizona SIP, with the exception of subsection (E)(6) in Rule R18-2-C1302, which was withdrawn by ADEQ. The EPA is also approving Appendix 14 and revised R18-2-715.02.

### **IV. Incorporation by Reference**

In this rule the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by

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to Michael Stoker, Regional Administrator, U.S. Environmental Protection Agency, Region 9, "Re: Justification and Clarification on Arizona Administrative Code R18-2-B1301, *Limits on Lead Emissions from the Hayden Smelter*," dated October 11, 2018.

<sup>3</sup> Letter from Timothy S. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality, to Michael Stoker, Regional Administrator, U.S. Environmental Protection Agency, Region 9, "Re: Request to Withdraw from EPA Consideration, Arizona Administrative Code R18-2-C1302, Subsection (E)(6)," dated August 27, 2018.

reference of the ADEQ rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>4</sup>

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

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<sup>4</sup> 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, the EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Lead, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 30, 2018.

Michael Stoker,  
Regional Administrator,  
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart D—Arizona**

2. In §52.120, table 2 in paragraph (c) is amended by:

a. Revising the entry “R18-2-715.02”;

b. Adding the entry “R18-2-B1301” after the subheading “Article 13 (State Implementation Plan Rules for Specific Locations)”;

c. Adding the entries “R18-2-C1302, excluding subsection (E)(6)” and “Appendix 14” after the entry “R18-2-B1301.01”.

The revision and additions read as follows:

**§52.120 Identification of plan.**

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(c) \* \* \*

**Table 2—EPA-Approved Arizona Regulations**

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*****				
<b>Article 7 (Existing Stationary Source Performance Standards)</b>				
*****				
R18-2-715.02	Standards of Performance for Existing Primary Copper	5/7/2017	[insert date of publication in the Federal Register], [insert Federal Register citation]	Submitted by the Governor’s designee on April 6, 2017.

	Smelters; Fugitive Emissions			
*****				
<b>Article 13 (State Implementation Plan Rules for Specific Locations)</b>				
R18-2-B1301	Limits on Lead Emissions from the Hayden Smelter	7/1/2018	<b>[insert date of publication in the Federal Register], [insert Federal Register citation]</b>	Submitted by the Governor's designee on April 6, 2017.
*****				
R18-2-C1302, excluding subsection (E)(6)	Limits on SO <sub>2</sub> Emissions from the Miami Smelter	<b>[insert date 30 days after date of publication in the Federal Register]</b>	<b>[insert date of publication in the Federal Register], [insert Federal Register citation]</b>	Submitted by the Governor's designee on April 6, 2017. Subsection (E)(6) was withdrawn by the Arizona Department of Environmental Quality.
Appendix 14	Procedures for Sulfur Dioxide and Lead Fugitive Emissions Studies for the Hayden Smelter	5/7/2017	<b>[insert date of publication in the Federal Register], [insert Federal Register citation]</b>	Submitted by the Governor's designee on April 6, 2017.
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